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exemption clause, when itself part of the scheme to issue fully paid-up stock for overvalued property, should be void. Another difficulty with the defense arises from the fact that, the creditor's right against the stockholder being direct, the stockholder is availing himself as beneficiary of a defense created for him by a contract to which he was a stranger. Neither of these objections to the defense, however, seems insuperable. As a matter of authority the validity of a stockholder's exemption clause has been unanimously sustained, without, however, any attempt to differentiate as to possible bases of the liability. *Brown v. Eastern Slate Co.*, 134 Mass. 590; *Basshor & Co. v. Forbes*, 36 Md. 154; *Bush v. Robinson*, 95 Ky. 492, 26 S. W. 178; *Grady v. Graham*, 64 Wash. 436, 116 Pac. 1098. But *cf. Kreisser v. Ashtabula Gas Light Co.*, 24 Ohio Cir. Ct. R. 313.

CRIMINAL LAW — SUSPENSION OF SENTENCE. — A prisoner was convicted in a District Court of the United States for embezzlement in violation of section 5209 REVISED STATUTES, and sentenced to imprisonment for five years, the minimum provided for by the statute. The judge, then, over the objection of the United States District Attorney, ordered the suspension of execution of the sentence, during the good behavior of the prisoner, and extended the term of the court for five years. The United States seeks from the Supreme Court a writ of *mandamus*, directing the judge to vacate the order. *Held*, that *mandamus* should issue. *Ex parte United States, Petitioner*, U. S. Sup. Ct., Oct. Term, 1915, No. 11 original.

For a discussion of this case, see NOTES, p. 369.

DEATH BY WRONGFUL ACT — STATUTORY LIABILITY IN GENERAL — ADDITIONAL LIABILITY FOR INJURY CAUSING DEATH. — Section 1 of the Federal Employers' Liability Act provides that where the employee of an interstate carrier is negligently killed, his representative may recover for the benefit of the next of kin. U. S. COMP. STAT. 1913, § 8657. Section 9 provides that where an employee is injured, his right of action shall survive to his representative for the benefit of the next of kin. U. S. COMP. STAT., § 8665. An employee of an interstate carrier was injured, and, after having lived ten minutes in an unconscious condition, died from the injury. His representative seeks to recover under both statutes. *Held*, that he may recover only under the death statute. *Great Northern Ry. Co. v. Capital Trust Co.*, U. S. Sup. Ct., Oct. Term, 1916, No. 107.

Many states have statutes similar to those in the principal case. See TIFANY, DEATH BY WRONGFUL ACT, 2 ed., § 26. Most courts hold that there may be a recovery under the survival statutes, even if death results from the injury. *Missouri, etc. Ry. Co. v. Bennett*, 5 Kan. App. 231; *Brown v. Chicago, etc. Ry. Co.*, 102 Wis. 137, 77 N. W. 748. *Contra, Merrihew v. Chicago, etc. Ry. Co.*, 92 Ill. App. 346; *Lubrano v. Atlantic Mills*, 19 R. I. 129, 32 Atl. 205. And a majority of the states allow recovery under the death acts, although death is not immediate. *Brown v. Buffalo, etc. R. Co.*, 22 N. Y. 191. See *Roach v. Imperial Mining Co.*, 7 Fed. 698, 704. *Contra, Sawyer v. Perry*, 88 Me. 42, 33 Atl. 660; *Dolson v. Lake Shore, etc. Ry. Co.*, 128 Mich. 444, 87 N. W. 629. It would follow that the facts may be such as to satisfy both statutes. The theories of the two actions are entirely different. See 15 HARV. L. REV. 854. Consequently most jurisdictions permit a recovery under both, where the facts permit it. *Leggott v. Great Northern Ry. Co.*, 1 Q. B. D. 599; *Mahoning Valley Ry. Co. v. Van Alstine*, 77 Ohio St. 395, 83 N. E. 601. See *Stewart v. United Electric Light & Power Co.*, 104 Md. 332, 344, 65 Atl. 49, 54; *Murphy v. St. Louis, etc. R. Co.*, 92 Ark. 159, 163, 122 S. W. 636, 638. *Contra, Sweelland v. Chicago, etc. R. Co.*, 117 Mich. 329, 75 N. W. 1066. It would seem to be immaterial that the same person may receive the benefit of both actions. But, where the death